

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

47 WRIT PETITION NO.6917 OF 2019

DIGAMBHAR DNYANDADEO KALLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. A A Nimbalkar h/f Shaikh
Shoyab
AGP for Respondents: Mr. S.B. Yawalkar
Advocate for Respondents : Mr. Mahajan Sandeep Y. For R.no.
5, Mr. Rajale Gulab B. For R.no. 4

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CORAM : NITIN W. SAMBRE & S. G. CHAPALGAONKAR, JJ.
Dated: April 24, 2023

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PER COURT :-

1. The case of the petitioner is that the respondents had passed an Award under the provisions of Land Acquisition Act on 23.6.2014. The petitioner herein claims to be the owner of land gat no.148 admeasuring 1H 22 R situated at Ingoda, Tq. Paranda, District Osmanabad, which was subjected to acquisition vide section 4 notification dated 26.11.2010. An award acquiring land of the petitioner was passed on 23.6.2014.

2. After section 9 notice was served on 26.7.2012, the petitioner lodged his objection on 4.10.2012. As a sequel of

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which, after first measurement, re-measurement was carried out on 6.8.2013, report of which was submitted on 19.8.2013.

3. Report of re-measurement of the land of the petitioner was received on 19.8.2013 respondent no.3 has no power to make changes in the Award.

4. Learned counsel for the petitioner submits that the petitioner's land ought not have been acquired by passing the Award dated 23.6.2014. So as to substantiate his contentions, he has drawn support of the affidavit of respondent nos.1 and

2. Paragraph nos.4 and 5 reads thus :-

“4. I say and submit that the petitioner filed an objection application to acquisition on date 4.10.2012 on that basis the respondent no.3 make a letter to TILR Paranda to inspect and verify the petitioners land in view of acquisition on date 5.11.2012. The TILR Paranda mentioned that the land of the petitioner is not affected in said acquisition. The copy objection application date 4.10.2012, letter date 5.11.2012 and report date 19.8.2013 are annexed herewith and marked as Exhibit R-2 colly.

5. I say and submit that the respondent no.3 forwarded draft Award to the District Collector, Osmanabad for sanction on date 18.6.2013. The report of TILR Paranda about the petitioners land received on date 19.8.2013. Due to this

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technicalities, the said Award is declared with petitioners land. At this stage, respondent no.3 has no power to make changes in Award.”

As such, learned counsel would urge that directions needs to be issued to the respondents authorities to carry out appropriate corrections in the award dated 23.6.2014 thereby deleting land of the petitioner from the acquisition.

5. The fact remains that once the Award is passed, acquisition of the land is completed, and in such an eventuality, rightly so claimed, respondents authorities are not empowered to pass order of any deletion of the land from the acquisition, as such powers can be read in provisions of section 48 of the Land Acquisition Act, 1894.

6. In the aforesaid background, in our opinion, once land of the petitioner was subjected to acquisition vide award dated 23.6.2014, option to the petitioner for getting his land released from such acquisition may be based on second measurement report by taking recourse to the provisions of section 48 of the Land Acquisition Act, 1894. Admittedly, the petitioner has not taken recourse to any such remedy.

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7. In view of the above, we deem it appropriate to dispose off the petition. We permit the petitioner to approach the respondents/authority under section 48 of the Land Acquisition Act 1894. Such prayer, if made by the petitioner, the same be dealt with having regard to the time taken by the respondents as mentioned herein-above. Petition accordingly disposed off.

8. Needles to observe that the respondent no.5, if has any objection to the above, is at liberty to address the Collector on the said issue.

(S. G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE, J.)

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